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NEW YORK, NY 10150-5257			ART UNIT	PAPER NUMBER
			3743	
DATE MAILED: 07/12/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/854,179

Applicant(s)

ERSPAMER ET AL.

Examiner

Nihir Patel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06.03.2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) ____ is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-50 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Response to Arguments

Applicant's arguments filed on June 3rd, 2005, with respect to claims 1-50 have been fully considered and are persuasive. The previous office action has been withdrawn.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-3, 5-7, 11, 12, 17-20, 24, 26, 28-30, 32, 37, 43 and 45 are rejected under 35 U.S.C. 102(e) as being anticipated by Faulks et al. (US 6,152,906).

Referring to claim 1, Faulks discloses an absorbent article having improved breathability that comprises a unitary absorbent core **24 (see column 8 lines 25-35)** having a basis weight of about 75 gsm or greater **(see column 10 lines 63-67)**, comprising a fibrous absorbent layer **22 (see column 9 lines 50-54)** having an upper fluid receiving surface **(see column 9 lines**

54-58) and a lower surface with a hydrophobic vapor-transmissive moisture barrier integral with the lower surface of the absorbent layer (see column 8 lines 61-67 and column 9 lines 1-11).

Referring to claim 2, Faulks discloses an apparatus wherein the absorbent layer comprises natural fibers, synthetic fibers or a mixture thereof (see column 9 lines 55-65).

Referring to claim 3, Faulks discloses an apparatus wherein the hydrophobic moisture barrier comprises a hydrophobic material which at least partially coats the fibers of the lower surface of the absorbent layer (see column 9 lines 5-10).

Referring to claim 5, Faulks discloses an apparatus further comprises from about 5 to about 90 percent by weight of SAP (see column 11 lines 45-50).

Referring to claim 6, Faulks discloses an apparatus wherein the core has a basis weight of from about 80 gsm to about 1000 gsm (see column 10 lines 63-67 and column 11 lines 1-5).

Referring to claim 7, Faulks discloses an apparatus wherein the core has a basis weight of from about 100 gsm to about 500 gsm (see column 10 lines 63-67 and column 11 lines 1-5).

Referring to claim 10, Faulks discloses an apparatus that has a hydrohead of 30 mm or more (see column 8 lines 50-60).

Referring to claim 11, Faulks discloses an apparatus that has a hydrohead of 50 mm or more (see column 8 lines 50-60).

Referring to claim 12, Faulks discloses an apparatus that has a hydrohead of 70 mm or more (see column 8 lines 50-60).

Referring to claim 17, Faulks discloses an apparatus that has a water vapor transmission rate of 500 g/m²/24 hr or greater (see column 8 lines 40-50).

Referring to claim 18, Faulks discloses an apparatus that has a water vapor transmission rate of 1000 g/m²/24 hr or greater (see column 8 lines 40-50).

Referring to claim 19, Faulks discloses an apparatus that has a water vapor transmission rate of 2000 g/m²/24 hr or greater (see column 8 lines 40-50).

Referring to claim 20, Faulks discloses an apparatus that has a water vapor transmission rate of 3000 g/m²/24 hr or greater (see column 8 lines 40-50).

Referring to claim 24, Faulks discloses an apparatus wherein the moisture barrier has a structure which substantially is fibers coated with hydrophobic material (see column 9 lines 1-10).

Referring to claim 26, Faulks discloses an apparatus that comprises a liquid pervious top sheet 22 (see column 9 lines 50-55) and a unitary absorbent core 24 (see column 10 lines 30-40).

Referring to claim 27, Faulks discloses an apparatus that further comprises a micro-porous backsheet (see column 9 lines 29-35).

Referring to claim 28, Faulks discloses an apparatus that states that the article is an infant disposable diaper, training pant, an absorbent surgical pad, an adult incontinence device, a sanitary napkin, a pantiliner or a feminine hygiene pad (see column 1; Field of the Invention).

Referring to claim 29, Faulks discloses an apparatus that comprises a unitary absorbent core 24 having a basis weight of about 75 gsm (see column 10 lines 63-67 and column 11 lines 1-5) comprising a fibrous absorbent layer 22 (see column 9 lines 50-60Z) having an upper fluid receiving surface and a lower surface with a hydrophobic vapor-transmissive moisture barrier

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integral with the lower surface of the absorbent layer (see column 8 lines 60-67 and column 9 lines 1-10).

Referring to claim 45, claim 45 is product by process claim and is clearly anticipated by claim 29.

Referring to claim 30, Faulks discloses an apparatus wherein the fibrous absorbent layer comprises natural fibers, synthetic fibers or mixture thereof (see column 9 lines 55-65).

Referring to claim 32, Faulks discloses an apparatus further comprises from about 5 to about 90 percent by weight of SAP (see column 11 lines 45-50).

Referring to claim 37, Faulks discloses an apparatus wherein the fibrous absorbent layer is non-woven (see column 9 lines 65-67).

Referring to claim 43, Faulks discloses an apparatus wherein the moisture barrier has a structure which at least partially coats the fibers at the surface of the absorbent layer with hydrophobic material (see column 10 lines 1-10).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 3, 6, 7, 26, 28, 29, 30 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hanson et al. (US 5,509,915) in view of Huffman (US 4,935,021).

Referring to claims 1, 3 and 29, Hanson discloses the applicant's invention as claimed with the exception of providing a lower surface vapor-transmissive moisture barrier that is

hydrophobic. Huffman discloses a disposal diaper with center gathers that does provide a lower surface vapor-transmissive moisture barrier that is hydrophobic (see **column 6 lines 63-67**).

Therefore it would have been obvious to modify Hanson's invention by providing a lower surface vapor-transmissive moisture barrier that is hydrophobic as taught by Huffman in order to prevent liquid (e.g. urine) from leaking out.

Claims **4 and 31** are rejected under 35 U.S.C. 103(a) as being unpatentable over Faulks et al. (US 6,152,906) in view of Lindsay et al. (US 6,613,955).

Referring to **claims 4 and 31**, Faulks discloses the applicant's invention as claimed with the exception of providing hydrophobic material that is a natural or synthetic polymer. Lindsay discloses an absorbent articles with wicking barrier cuffs that does provide hydrophobic material that is a natural or synthetic polymer (see **column 33 lines 4-8**). Therefore it would have been obvious to modify Faulks's invention by providing hydrophobic material that is a natural or synthetic polymer as taught by Lindsay in order to prevent liquid (e.g. urine) from leaking out.

Claims **8 and 9** are rejected under 35 U.S.C. 103(a) as being unpatentable over Faulks et al. (US 6,152,906) in view of Lash et al. (US 6,372,952).

Referring to **claim 8**, Faulks discloses the applicant's invention as claimed with the exception of providing a core that has a density of from about 0.03 to about 0.7 g/cc. Lash discloses an absorbent articles with wicking barrier cuffs that doe provide a core that has a density of from about 0.03 to about 0.7 g/cc (see **column 25 lines 25-30**). Therefore it would have been obvious to modify Faulks's invention by providing a core that has a density of from about 0.03 to about 0.7 g/cc as taught by Lash in order to prevent liquid (e.g. urine) from leaking out.

Referring to claim 9, Faulks discloses the applicant's invention as claimed with the exception of providing a core that has a density of from about 0.04 to about 0.3 g/cc. Lash discloses an absorbent articles with wicking barrier cuffs that doe provide a core that has a density of from about 0.04 to about 0.3 g/cc (**see column 25 lines 25-30**). Therefore it would have been obvious to modify Faulks's invention by providing a core that has a density of from about 0.04 to about 0.3 g/cc as taught by Lash in order to prevent liquid (e.g. urine) from leaking out.

Claim **16** is rejected under 35 U.S.C. 103(a) as being unpatentable over Faulks et al. (US 6,152,906) in view of Allen et al. (US 6,168,584).

Referring to claim 16, Faulks discloses the applicant's invention as claimed with the exception of providing an air permeability of 18 m³/min/m² or greater. Allen discloses spacers for use in disposable absorbent articles and disposable absorbent articles having such spacers that does provide an air permeability of 18 m³/min/m² or greater (**see column 6 lines 45-50**). Therefore it would have been obvious to modify Faulks's invention by providing an air permeability of 18 m³/min/m² or greater as taught by Allen in order to prevent leakage.

Claims **33 and 34** are rejected under 35 U.S.C. 103(a) as being unpatentable over Faulks et al. (US 6,152,906) in view of Nakanishi et al. (US 4,850,991).

Faulks discloses the applicant's invention as claimed with the exception of providing hydrophobic material that is an emulsion polymer that is applied in the form of foam. Nakanishi discloses an absorbent article that does provide hydrophobic material that is an emulsion polymer that is applied in the form of foam (**see column 4 lines 20-25 and column 5 lines 1-5**). Therefore it would have been obvious to modify Faulks's invention by providing hydrophobic

material that is an emulsion polymer that is applied in the form of foam as taught by Nakanishi in order to prevent leakage.

Claims **38 and 39** are rejected under 35 U.S.C. 103(a) as being unpatentable over Faulks et al. (US 6,152,906) in view of Graef et al. (US 2002/0007169).

Referring to claims 38 and 39, Faulks discloses the applicant's invention as claimed with the exception of providing an absorbent core that comprises two/three or more fibrous strata. Graef discloses an absorbent composite having improved surface dryness that does provide an absorbent core that comprises two/three or more fibrous strata (**see paragraph [0027]**). Therefore it would have been obvious to modify Faulks's invention by providing an absorbent core that comprises two/three or more fibrous strata as taught by Graef in order to prevent leakage.

Referring to claims 21, 22 and 23, The applicant's specification lacks criticality on why the barrier effectiveness must have a value of 30/50/75 or greater. Therefore it is considered an engineering choice and it is obvious to one in the ordinary skill of the art to have the barrier effectiveness values as set in the claims or any other desired values.

Claims **46 and 47** are rejected under 35 U.S.C. 103(a) as being unpatentable over Faulks et al. (US 6,152,906).

Referring to claims 46 and 47, Faulks discloses the applicant's invention as claimed with the exception of providing a barrier effectiveness value of 30 mm or more. After reviewing the applicant's specification, the examiner found that the specification lacks criticality on why the barrier effectiveness must have a value of 30 mm or more and considers it an engineering

choice. It is also obvious to one in the ordinary skill of the art to have the barrier effectiveness values as set in the claims or any other desired values.

Referring to claim 50, the applicant has not established any criticality on how the unitary process would improve the product described in claim 47.

Claims **13, 14 and 15** are rejected under 35 U.S.C. 103(a) as being unpatentable over Faulks et al. (US 6,152,906) in view of Srinivasan et al. (US 5,830,555).

Referring to claims 13, 14 and 15, Faulks discloses the applicant's invention as claimed with the exception of providing an absorbent core having a strikethrough value of 0.7 g or less. Srinivasan discloses a thermally apertured nonwoven product and process for making same that does provide an absorbent core having a strikethrough value of 0.7 g or less (**see column 10 lines 10-20**). Therefore it would have been obvious to modify Faulks's invention by providing an absorbent core having a strikethrough value of 0.7 g or less as taught by Srinivasan in order to prevent leakage.

After reviewing the applicant's specification, the examiner found that the specification lacks criticality on why the strikethrough must have a value of 0.7 g or less and considers it an engineering choice. It is also obvious to one in the ordinary skill of the art to have the strikethrough values as set in the claims or any other desired values.

Claims **25, 44 and 48** are rejected under 35 U.S.C. 103(a) as being unpatentable over Faulks et al. (US 6,152,906) in view of Hammons et al. (US 5,647,863).

Referring to claims 25 and 44, Faulks discloses the applicant's invention as claimed with the exception of providing a moisture barrier has a reticulated remnant of a barrier material emulsion extending from the lower surface region of the absorbent layer to form an outer

reticulated foam barrier. Hammons discloses an absorbent article with clean appearance and capacity signal means that does provide a moisture barrier has a reticulated remnant of a barrier material emulsion extending from the lower surface region of the absorbent layer to form an outer reticulated foam barrier (see **column 5 lines 4-55 and column 9 lines 45-65**). Therefore it would have been obvious to modify Faulks's invention by providing a moisture barrier has a reticulated remnant of a barrier material emulsion extending from the lower surface region of the absorbent layer to form an outer reticulated foam barrier as taught by Hammons in order to prevent leakage.

Referring to claim 48, Faulks discloses the applicant's invention as claimed with the exception of providing a foamed constituent that is a high internal phase emulsion (HIPE) foam. Hammons discloses an absorbent article with clean appearance and capacity signal means that does provide a foamed constituent that is a high internal phase emulsion (HIPE) foam (**column 9 lines 45-65**). Therefore it would have been obvious to modify Faulks's invention by providing a foamed constituent that is a high internal phase emulsion (HIPE) foam as taught by Hammons in order to prevent leakage.

Claim **35** is rejected under 35 U.S.C. 103(a) as being unpatentable over Faulks et al. (US 6,152,906) in view of Hoey (US 3,887,408).

Referring to claim 35, Faulks discloses the applicant's invention as claimed with the exception of providing an emulsion polymer that includes a foam stabilizer. Hoey discloses a method of forming permeable polymeric liner on absorbent diapers, wound dressings, catamenial pads and the like that does provide an emulsion polymer that includes a foam stabilizer (**column 1 lines 45-50 and column 9 lines 49-55**). Therefore it would have been obvious to modify

Faulks's invention by providing an emulsion polymer that includes a foam stabilizer as taught by Hoey in order to prevent leakage.

Claim **36** is rejected under 35 U.S.C. 103(a) as being unpatentable over Faulks et al. (US 6,152,906) in view of Cautilli et al. (US 4,387,121).

Referring to claim 36, Faulks discloses the applicant's invention as claimed with the exception of providing an emulsion polymer that includes a hydrophobicity agent. Cautilli discloses a method of manufacturing of water permeable-hydrophobic membrane that does provide an emulsion polymer that includes a hydrophobicity agent (**see column 2 lines 55-65 and column 3 lines 65-67**). Therefore it would have been obvious to modify Faulks's invention by providing an emulsion polymer that includes a hydrophobicity agent as taught by Cautilli in order to prevent leakage.

Claims **40 and 41** are rejected under 35 U.S.C. 103(a) as being unpatentable over Faulks et al. (US 6,152,906) in view of Christon et al. (US 5,722,966).

Referring to claim 40, Faulks discloses the applicant's invention as claimed with the exception of providing a tissue having a basis weight of less than about 30 gsm, with emulsion polymer binder having a dry basis weight of about 10 gsm or less. Christon discloses a water dispersible and flushable absorbent article that does provide a tissue having a basis weight of less than about 30 gsm, with emulsion polymer binder having a dry basis weight of about 10 gsm or less (**see column 6 lines 5-10 and lines 63-67 and column 7**). Therefore it would have been obvious to modify Faulks's invention by providing a tissue having a basis weight of less than about 30 gsm, with emulsion polymer binder having a dry basis weight of about 10 gsm or less as taught by Christon in order to prevent leakage.

Referring to claim 41, Faulks discloses the applicant's invention as claimed with the exception of providing fibrous stratum that contains fifty percent or more by weight of eucalyptus fibers. Christon discloses a water dispersible and flushable absorbent article that does provide fibrous stratum that contains fifty percent or more by weight of eucalyptus fibers (see **column 8 lines 60-67**). Therefore it would have been obvious to modify Faulks's invention by providing fibrous stratum that contains fifty percent or more by weight of eucalyptus fibers as taught by Christon in order to prevent leakage.

Claim **42** is rejected under 35 U.S.C. 103(a) as being unpatentable over Faulks et al. (US 6,152,906) in view of Graef et al. (US 2005/0090789).

Referring to claim 42, Faulks discloses the applicant's invention as claimed with the exception of providing an absorbent core that comprises one or more strata which are multi-bonded with an emulsion polymer binder and thermal bio-component fiber binder. Graef discloses an absorbent composite having improved surface dryness that does provide an absorbent core that comprises one or more strata which are multi-bonded with an emulsion polymer binder and thermal bio-component fiber binder (see **page 5 paragraph [0056]** and **page 10 paragraph [0093]**). Therefore it would have been obvious to modify Faulks's invention by providing an absorbent core that comprises one or more strata which are multi-bonded with an emulsion polymer binder and thermal bio-component fiber binder as taught by Graef in order to prevent leakage.

Claim **49** is rejected under 35 U.S.C. 103(a) as being unpatentable over Faulks et al. (US 6,152,906) in view of Mesek (US 3,838,694).

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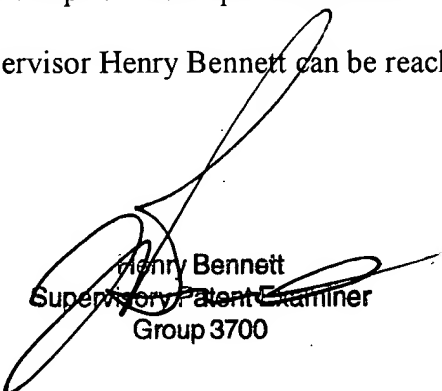
Referring to claim 49, Faulks discloses the applicant's invention as claimed with the exception of providing material or structure that comprises about 50 to 99 percent by weight of natural fibers, synthetic fibers or a mixture thereof. Mesek discloses a diaper with back-to-back transition web facing that does provide material or structure that comprises about 50 to 99 percent by weight of natural fibers, synthetic fibers or a mixture thereof (see column 6 lines 50-60). Therefore it would have been obvious to modify Faulks's invention by providing material or structure that comprises about 50 to 99 percent by weight of natural fibers, synthetic fibers or a mixture thereof as taught by Mesek in order to prevent leakage.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Nihir Patel whose telephone number is (571) 272-4803. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:30 pm. If attempts to reach the examiner by telephone are unsuccessful the examiner supervisor Henry Bennett can be reached at (571) 272 4791.

NP
July 7th, 2005



Henry Bennett
Supervisory Patent Examiner
Group 3700